

EXHIBIT 5

Re: SERVICE OF COURT DOCUMENT(S) - CASE NO. MDL 3074 - In Re: BPS Direct, LLC and Cabela's LLC Wiretapping Litigation

Carey Alexander <calexander@scott-scott.com>

Mon 10/30/2023 8:02 PM

To: McLoone, Jennifer (SHB) <JMCLOONE@shb.com>; Joseph Kanee <joseph@marcuszelman.com>

Cc: Izquierdo, Belkys (SHB) <BIZQUIERDO@shb.com>; Searle, Maveric (SHB) <msearle@shb.com>; Kate M. Baxter-Kauf <kmbaxter-kauf@locklaw.com>; Nicholas Colella <NickC@lcllp.com>

Counsel,

Thank you for taking the time to speak with us today regarding documents responsive to Plaintiffs' requests for production related to session replay data.

Notwithstanding Defendants' claim in its objections and responses that Defendants were "unable to respond" to Request No. 7, you confirmed during today's call that Defendants had previously identified the email addresses associated with several Plaintiffs and had also previously identified, but have withheld from production to date, session replay data associated with Plaintiffs. Plaintiffs reiterate our request that Defendants produce all session replay data that it has identified as associated with the Plaintiffs by no later than the close of business tomorrow.

We understand that Defendants are standing on each of their interposed objections to Plaintiffs' Request for Production Nos. 7, 9, 10, and 13, including to producing any session replay data associated with individuals other than the Plaintiffs prior to the Court's resolution of Plaintiffs' motion for class certification. With regard to Defendants' objections regarding proportionality, we understand that Defendants are not presently aware of the size of the session replay data responsive to Plaintiffs' requests, the number of fields associated with session replays, whether the session replay data can be queried other than by email address, or what the cost of producing the session replay data would be. We understand that Defendants are currently in the process of determining the answers to those questions. We have requested that Defendants provide such information by the close of business tomorrow. With regards to burden, we understand that all session replay data is maintained by Quantum Metric and would be responsive to Plaintiffs' subpoena. Consistent with the parties' obligation to minimize the burden on non-parties, as a potential alternative to production, Plaintiffs proposed receiving read-only access to Quantum Metric's platform, which you have taken under advisement.

With regard to Request No. 15, Defendants have agreed to produce data relating to how Defendants configured its use of session replay code. We have requested that Defendants produce and Bates-stamp the JavaScript files associated with the session replay code, which you have taken under advisement.

If your understanding of our conversation differs, please let us know.

Thank you.

From: "McLoone, Jennifer (SHB)" <JMCLOONE@shb.com>

Date: Thursday, October 26, 2023 at 5:53 PM

To: Joseph Kanee <joseph@marcuszelman.com>

Cc: "Izquierdo, Belkys (SHB)" <BIZQUIERDO@shb.com>, "Searle, Maveric (SHB)" <msearle@shb.com>, Kate Baxter-Kauf <kmbaxter-kauf@locklaw.com>, Nicholas Colella <NickC@lcllp.com>, Carey Alexander <calexander@scott-scott.com>

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Ok. Just fyi that as I said, I'm traveling and unavailable today and tomorrow, so to the extent I don't have all the info you want by Monday, I'll keep working after the meet and confer to get it.

With regard to the report(s), they were already produced. Did you not receive them?

With regard to paragraph 5(a) (and I saw Kate's email asking this same question sent during the hearing yesterday), my understanding is that Paragraph of the Order derives from the discussion about whether or not we can identify session replays for the named plaintiffs. To the extent a plaintiff was authenticated (signed in) on the website at the time of their website visit, we can search for corresponding session replays using email address. If you can provide email addresses for the named plaintiffs (the email addresses that they would have used in connection with the site), I can request that information. As previously indicated, the replays exist as .har files.

Jennifer A. McLoone

Partner

jmcloone@shb.com | 305-960-6937

From: Joseph Kanee <joseph@marcuszelman.com>

Sent: Thursday, October 26, 2023 1:01 PM

To: McLoone, Jennifer (SHB) <JMCLOONE@shb.com>

Cc: Izquierdo, Belkys (SHB) <BIZQUIERDO@shb.com>; Searle, Maveric (SHB) <msearle@shb.com>; Kate M. Baxter-Kauf <kmbaxter-kauf@locklaw.com>; Nicholas Colella <NickC@lcllp.com>; Carey Alexander <calexander@scott-scott.com>

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EXTERNAL

Counsel,

Plaintiffs are available to meet and confer on Monday at 2:00 pm ET. We will circulate dial-in information shortly under separate cover.

During the meet and confer, we would like to discuss the issues raised in Paragraph 5(b) of the Court's October 23, 2023 Order, ECF No. 67. In particular, we would like to understand the basis for Defendants' objections to Plaintiffs' Request for Production Nos. 6, 7, 9, 10, 12, 13, and 15. With regard to session replay data in Defendants' possession, custody, or control, please be prepared to explain the size, format, location, and accessibility of such data, including archived data.

Prior to our meet and confer, please also advise when Defendants expect to produce the report of website visits Defendants propose producing as responsive to Plaintiffs' Request for Production Nos. 9 and 12. Similarly, please advise what information is needed from Plaintiffs per paragraph 5(a) of Judge Kearney's Order [DE 63].

Thank you.

Joseph H Kanee, Esq.

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On Mon, Oct 23, 2023 at 5:11 PM McLoone, Jennifer (SHB) <JMCLOONE@shb.com> wrote:

Thursday and Friday of this week I cannot do. But I am free Monday 10/30 and can make almost any time before 3 pm work. If you want to send an email with the issues, that will be helpful too.

Jennifer A. McLoone

Partner

jmcloone@shb.com | 305-960-6937

From: Joseph Kanee <joseph@marcuszelman.com>

Sent: Monday, October 23, 2023 5:05 PM

To: Izquierdo, Belkys (SHB) <BIZQUIERDO@shb.com>; McLoone, Jennifer (SHB) <jmcloone@shb.com>; Searle, Maveric (SHB) <msearle@shb.com>

Cc: Kate M. Baxter-Kauf <kmbaxter-kauf@locklaw.com>; Nicholas Colella <NickC@lcllp.com>; Carey Alexander <calexander@scott-scott.com>

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EXTERNAL

Hi Jennifer,

Could you please let me know when you would be available to meet and confer regarding Defendants' responses to discovery? We have a fairly short window as per Judge Kearney's order today, so is there a time that works Thursday from 9-3pm or sometime Friday?

Joseph H Kanee, Esq.

 [Image removed by sender.](#)

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On Wed, Sep 27, 2023 at 8:08 PM Izquierdo, Belkys (SHB) <BIZQUIERDO@shb.com> wrote:

Court:	United States District Court for the Eastern District of Pennsylvania
Case No.:	MDL 3704
Case Style:	IN RE: BPS DIRECT, LLC and CABELA'S LLC, WIRETAPPING LITIGATION
Title of Document(s) Served:	<p>1. Defendants' Responses to Plaintiffs' First Requests For Admission;</p> <p>2. Defendants' Responses to Plaintiffs' First Requests For Production; and</p> <p>3. Defendants' <u>Confidential</u> Answers to Plaintiffs' First Set of Interrogatories</p>
Serving Attorney's Name:	Jennifer A. McLoone
Serving Attorney's Phone No.:	305.358.5171